IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FOURTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 19847 of 2000

Between:

1. M/S.Hareesh Wines, rep. By its proprietrix and Licensee B.Prameela Devi,

situated at Rayanpadu Railway gate (1/8 Link Road),

Rayanpady (V), Vijayawada (M), District Krishna.

2. Smt. B.Prameela Devi, w/o B.Nageshwar Rao, aged

38 years, Occ: business, r/o.5-48, Rayanpadu (V),

Vijayawada (M), District Krishna.

..... PETITIONERS

AND

1. The Commissioner of Prohibition & Excise, Government of

Andhra Pradesh, Nampally, Hyderabad.

2. The Prohibition & Excise Superintendent, Krishna District

at Machilipatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to

issue any appropriate writ order or direction more particularly one in the nature of writ of Mandamus by declaring the impugned proceedings passed by the 2nd respondent in R.C.No.1976/94/D1 dated 25.8.2000 as illegal, arbitrary, unconstitutional and violative of Article 14 and 19(1)(g) of Constitution of India besides violative of Schedule under Rule 25 of A.P.Indian Liquor & Foreign Liquor Rules, 1970 and barred by Limitation Act besides violative of principles of natural justice and set aside the same.

Counsel for the Petitioner: MR.Y.RAMA RAO

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court made the following :

ORDER:

The petitioners herein who are the licence holders under the provisions of the Excise Act, filed this Writ Petition, *inter alia* seeking Writ of Mandamus challenging the proceedings dated 25-08-2000 by the second respondent herein, demanding the differential amount towards the licence fee to a tune of Rs.6,07,500/-.

2. The case of the petitioners is that they were IL-24 license holders for the years 1992-93 and 1994-95 and the present impugned proceedings are sought to be levied on the ground that petitioners' shop is less than 5 kilometers.

3. According to the petitioners, for the purpose of showing that the shop is beyond 5 kilometers, they have already filed a certificate issued by the Executive Engineer on 16-12-1999, which shows that the distance from Vijayawada Corporation limits to the shop of the petitioners is 5.56 kilometers. Though the respondents have given notice during the enquiry, earlier, in response to which the petitioners have filed their representation along with the aforesaid certificate, however, subsequent thereto, the respondents have obtained a another certificate from the Executive Engineer, R&B, Vijayawada, which shows that the distance of the shop is only 4.76 kilometers. It is the case of the petitioners that, in fact, the distance between the shop and the municipality which has to be taken into consideration is not in the peripheral limits of the village which sought to be relied on by the respondents.

4. Having considered the submissions made and also on perusal of the material on record, it is seen that though the petitioner was given notice and he had

submitted a certificate in support of his claim, to show that the shop is away and beyond 5 kilometers, but the subsequent filing of the said certificate and the representation by the petitioners, no enquiry was conducted. Above that, the respondents have obtained a fresh certificate from the Executive Engineer subsequently, to show that the distance is less and that too, which is measured upto the peripheral limits of the village. However, it is apparent that subsequent to the obtaining of the said certificate, no opportunity was given to the petitioners, nor any enquiry was conducted. Having given one opportunity and invited the petitioners to submit their representations along with documents and to which, there was compliance by the petitioners, the respondents cannot obtain any fresh certificate or other evidence behind the back of the petitioners and rely on them for passing final orders.

5. In the circumstances, the impugned orders are liable to be set aside and the Writ Petition is accordingly allowed. The impugned orders dated 25-08-2000 are set aside. It shall, however, be open to respondent No.2 to give a fresh notice and opportunity to the petitioners and pass appropriate orders in accordance with law.

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B.PRAKASH RAO,J.

DATED 04TH AUGUST,2004

BSB/MRR

That Rule Nisi has been made absolute as above

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday the 04th day of August, two thousand and four.

ASSISTANT REGISTRAR.

To

1. The Commissioner of Prohibition & Excise, Government of

Andhra Pradesh, Nampally, Hyderabad.

2. The Prohibition & Excise Superintendent, Krishna District

at Machilipatnam.

3. Two CCs to the Government Pleader for Prohibition & Excise, High Court Buildings,Hyderabad (OUT).

4. Two CD copies.